

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-03-DL-062
	)	
Petracom of Texarkana, L.L.C.	)	NAL/Acct. No.200332500006
Licensee of FM Radio Station KPGG in	)	
Ashdown, Arkansas	)	FRN 0005009881
	)	
Lutz, Florida	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: May 2, 2003**

By the Enforcement Bureau, Dallas Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Petracom of Texarkana, L.L.C. (“Petracom”), licensee of FM radio station KPGG, Ashdown, Arkansas, apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 11.35(a) of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Petracom apparently liable for failure to have Emergency Alert System (“EAS”) equipment installed.

**II. BACKGROUND**

2. On January 30, 2003, agents from the FCC’s Enforcement Bureau’s Dallas Field Office inspected FM station KPGG in Texarkana, Texas. The agents’ inspection revealed that EAS equipment was not installed. The station’s operations manager stated that the station had EAS equipment but that it was not installed. An entry in the station records stated that the EAS equipment had been removed for repair on October 16, 2002. The station records had no other entries indicating the equipment had been returned to service, and no entries of any EAS tests or reasons for failure to receive such tests. No record of a request by Petracom for additional time to repair the EAS equipment had been received by the Bureau’s Dallas and New Orleans offices.

**III. DISCUSSION**

3. Section 11.35(a) states that “[b]roadcast stations ... are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.” On January 30, 2003, Petracom failed to have EAS equipment installed at FM radio station KPGG. Station records indicated the equipment had been removed from service 106 days prior to the date of inspection, yet no request for additional time to repair the equipment had been made to

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<sup>1</sup> 47 C.F.R. § 11.35(a).

the District Director of either the Dallas or New Orleans Office.<sup>2</sup> Also, station records contained no entries of EAS tests, activations or reasons for failures to conduct such tests during this period.<sup>3</sup>

4. Based on the evidence before us, we find Petracom willfully<sup>4</sup> and repeatedly<sup>5</sup> violated Section 11.35(a) of the Rules by failing to have EAS equipment installed and operational from at least October 16, 2002, until January 30, 2003.

5. Pursuant to Section 1.80(b)(4) of the Rules,<sup>6</sup> the base forfeiture amount for failure to have EAS equipment installed and operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup> Considering the entire record and applying the factors listed above, this case warrants an \$8,000 forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>8</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>9</sup> Petracom of Texarkana, L.L.C. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 11.35(a) of the Rules by failing to have EAS equipment installed and operational..

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Petracom SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the

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<sup>2</sup> See 47 C.F.R. § 11.35(c).

<sup>3</sup> EAS activations and tests, failure to receive such tests and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.55(c)(7) and 11.61(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>5</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>6</sup> 47 C.F.R. § 1.80(b)(4).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>10</sup>

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Petracom of Texarkana, L.L.C., 1527 N. Dale Mabry Hwy, Lutz, Florida 33549.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells

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<sup>10</sup> See 47 C.F.R. § 1.1914.

District Director, Dallas Office  
Enforcement Bureau

Attachment